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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Myanmar, prepared by Mr. Yozo Yokota, Special Rapporteur, in accordance with Commission resolution 1993/73

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I. INTRODUCTION

A. Mandate

1. The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Myanmar has been described in each of the Special Rapporteur's previous reports to the General Assembly (A/47/651, paras. 1-5 and A/48/578, paras. 1-6) and to the Commission on Human Rights (E/CN.4/1993/37, paras. 1-6). It may be noted here that the mandate, as initially articulated in Commission resolution 1992/58 of 3 March 1992 (approved by Economic and Social Council decision 1992/235 of 20 July 1992) and subsequently extended by Commission resolution 1993/73 of 10 March 1993 (approved by Economic and Social Council decision 1993/278 of 28 July 1993), required the Special Rapporteur "to establish or to continue direct contacts with the Government and the people of Myanmar, including political leaders deprived of their liberty, their families and their lawyers" and "to report to the General Assembly at its forty-eighth session and to the Commission at its fiftieth session" (resolution 1993/73, para. 16). The object of the direct contacts and reporting by the Special Rapporteur is "with a view to examining the situation of human rights in Myanmar and following any progress made towards the transfer of power to a civilian government and the drafting of a new constitution, the lifting of restrictions on personal freedoms and the restoration of human rights in Myanmar" (Commission resolution 1992/58, para. 3). In order to facilitate the fulfilment of the mandate of the Special Rapporteur, the Government of Myanmar was urged to extend "its full and unreserved cooperation to the Commission and the Special Rapporteur and, to this end, to ensure that the Special Rapporteur has effectively free access to any person in Myanmar whom he deems appropriate in the performance of his mandate" (Commission resolution 1993/73, para. 17).

2. The substantive issues addressed by the Commission on Human Rights in resolution 1993/73 include the following concerns: that the electoral process initiated in Myanmar by the general elections of 27 May 1990 has yet to reach its conclusion and that, therefore, the will of the people is not the basis of the authority of government in Myanmar as required by the Universal Declaration of Human Rights; "that many political leaders, in particular elected representatives, remain deprived of their liberty and that Daw Aung San Suu Kyi, Nobel Peace Prize laureate, is still under house arrest"; that serious violations of a variety of fundamental civil rights continue; that refugee flows are creating problems in neighbouring countries; and that there is an "absence of guarantees for the physical integrity and well-being of returnees".

3. The preliminary report of the Special Rapporteur was submitted to the Secretary-General of the United Nations for dissemination to all States Members of the United Nations at the forty-eighth session of the General Assembly in November 1993 (A/48/578, annex). This comprehensive report is submitted to the Commission on Human Rights at its fiftieth session for consideration by the Commission.

B. Historical background

4. In 1948, the Union of Myanmar (then called Burma) gained independence from British colonial rule. From 1948 until 1962, the country was governed by a parliamentary democracy based on the Constitution of 2 September 1947. It provided for a federal system of government with separate executive, legislative and judicial branches. The States under the Union were considered autonomous. According to article 201 of the Constitution of 1947, ethnic minorities had, in theory, the right to secede from the Union, but, under article 202, this right was not to be exercised until 10 years from the date of entry into force of the Constitution. In March 1948, an armed insurgency against the then Government of Burma was begun by the Communist Party of Burma. From 1948 through 1961, various minority ethnic groups joined the armed insurgency.

5. In March 1962, General Ne Win took power in a coup d'état. He installed a one-party (Burma Socialist Programme Party) rule under military control. He embarked upon a programme known as the "Burmese Way to Socialism". In 1974, a new Constitution was drafted under which one-party rule continued.

6. Towards 1988, nationwide demonstrations began in reaction to the suppression of all civil and political rights since the overthrow of the constitutional government in 1962 and to the economic failure as a consequence of the policy of the Burmese Way to Socialism.

7. From March to June 1988, students, workers and monks demonstrated for more freedom and democracy, but the army used harsh measures to crush the demonstrations. Hundreds of civilians were arrested and many suffered severe injuries or died from ill-treatment in detention. Many persons were summarily or arbitrarily executed. On 21 June 1988, the Government imposed a ban on all public gatherings.

8. On 23 July 1988, General Ne Win resigned as party leader and promised economic reform and the holding of a referendum to end one-party rule and institute a multi-party system. However, demonstrations continued and the army and riot police attacked the demonstrators. It was reported that approximately 3,000 persons were killed in August 1988 alone. On 18 September 1988, the military took power and the State Law and Order Restoration Council (SLORC) was set up under the chairmanship of the Chief of Staff, Senior General Saw Maung. The National Assembly (Pyithu Hluttaw), the Council of State and other governmental bodies were dissolved. Free elections were promised by the SLORC but Daw Aung San Suu Kyi, daughter of General U Aung San (the national hero of independence who was assassinated in 1947) and General Secretary of the National League for Democracy (NLD), was banned from campaigning on the grounds that she kept unlawful association with insurgent organizations. On 20 July 1989, Daw Aung San Suu Kyi was detained by government forces. She has been under house arrest without trial since then and, in 1991, she was awarded the Nobel Prize for Peace. Many others, including most of the important opposition political leaders, were also detained.

9. On 27 May 1990, general elections were held in which the main opposition party (NLD) won 81 per cent of the seats (392 seats out of 485 in total)

and 60 per cent of the votes. However, the official announcement of the results of the elections was postponed by the SLORC in order to allow the Election Commission set up by the SLORC to scrutinize the expense accounts of all elected representatives.

10. Beginning in early 1992, a mass exodus of Myanmar Muslims from Rakhine State into Bangladesh was reported. At least 250,000 such persons have sought refuge for fear of persecution. On 28 April 1992, the Governments of Myanmar and Bangladesh signed an agreement for the voluntary and safe return of the refugees. By October 1993, approximately 40,000 refugees had returned to Myanmar under this arrangement.

11. In April 1992, General Than Shwe became Chairman of the SLORC after General Saw Maung had resigned from the post for reasons of health. Since this change of leadership, a number of new policies have been announced and implemented including: the release of many political leaders in detention (including the Former Prime Minister U Nu, but not Daw Aung San Suu Kyi); the holding of a National Convention for drafting the principles and guidelines for a new constitution; the granting of permission to the family of Daw Aung San Suu Kyi to visit her; the opening of universities and other institutions of higher education; the lifting of the curfew order and martial law; and the cessation of military tribunals of civilian cases.

12. On 9 January 1993, the National Convention was convened. The participants were composed of 702 delegates from eight categories as follows: (a) representatives from political parties including NLD (49); (b) representatives elected in the 1990 elections (107); (c) representatives of national racial groups (215); (d) representatives of peasants (93); (e) representatives of workers (48); (f) representatives of intelligentsia and technocrats (41); (g) representatives of state service personnel (92); and (h) other invited persons (57). The meeting of the National Convention has been adjourned several times for reasons not quite clear to outside observers.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Introduction

13. In carrying out his mandate, the Special Rapporteur has continued to seek information from all relevant sources. During the past year, information in the form of letters and reports has been received on a regular basis from a wide variety of individuals and non-governmental organizations as well as from the Government of Myanmar. In November 1993, the Special Rapporteur visited Myanmar, conducted interviews with high-level government officials as well representatives of various United Nations specialized agencies and bodies including the office of the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Development Programme (UNDP), representatives of various non-governmental organizations, and the people of Myanmar both inside and outside of the country as he paid visits to places relevant to his mandate.

B. The visit to Myanmar

1. Introduction

14. In September 1993, the Special Rapporteur addressed a letter to the Government of Myanmar requesting a visit to the country from 9 to 16 November 1993. In the letter, the Special Rapporteur also requested the honour of audiences with high governmental officials, meetings in circumstances providing full confidentiality with leaders of political parties, including those in detention or under restriction, and in particular with Daw Aung San Suu Kyi. The Special Rapporteur further requested full and free access to all individuals, representatives of non-governmental and inter-governmental organizations, whom he may have deemed necessary to the carrying out of his mandate or who would have expressed the will to meet with him. Visits to prisons and other centres of detention, with confidential contact with those detained, were also requested. The Special Rapporteur also requested full access to other areas of the country, in particular Rakhine State, for the purpose of carrying out unrestricted and confidential visits with the recent repatriates and returnees. By letters dated 15 September and 8 October 1993, the Government replied that the Special Rapporteur would be welcome in Myanmar.

15. The Special Rapporteur undertook a visit to Myanmar from 9 to 16 November 1993. Prior to the visit, the Special Rapporteur had been in frequent contact with the Permanent Representative of Myanmar to the United Nations Office at Geneva and with the Minister for Foreign Affairs who cooperated fully and facilitated the visit. The Special Rapporteur wishes to report that during his visit to Myanmar all of the Special Rapporteur's specific requests for meetings with high government officials were met. Similarly, the visit to Rakhine State was facilitated with appropriate briefings, meetings and visits within the areas of concern. In general, the Special Rapporteur enjoyed relative freedom in his movements and freedom in his access to private persons and others of interest, with some notable exceptions which shall be addressed below. It is further noted that the Special Rapporteur was promptly furnished with all the documentary information he requested before, during and after his visit. Consequently, the Special Rapporteur would like to record his deep appreciation to the Government of Myanmar for its cooperation in facilitating his visit to the country and otherwise cooperating in responding to his requests for information and explanation.

16. With respect to his meetings with governmental representatives, the Special Rapporteur met in Yangon with the following persons: General Khin Nyunt, Secretary One of the State Law and Order Restoration Council (SLORC); U Ohn Gyaw, Minister for Foreign Affairs; Brigadier General Myo Thant, Minister of Information; U Tha Tun, the Attorney-General; and U Aung Toe, Chief Justice of the Supreme Court. The Special Rapporteur also met in Rakhine State the Commander of the Western Command of the Rakhine SLORC.

17. In the course of his visit to Myanmar, the Special Rapporteur paid visits to, in chronological order, the following governmental institutions and facilities: Dagon University in the Dagon New Township; Yangon General

Hospital; First Military Hospital in Yangon; administrative offices of the Ministry of Home Affairs, Immigration and Manpower Department in Rakhine State and facilities of three reception camps along the Myanmar-Bangladesh frontier; Insein prison; and Yangon University campus. The Special Rapporteur also visited, in chronological order, and met with representatives of, the following non-governmental organizations: the Myanmar Red Cross Society; the Myanmar Maternal and Child Welfare Association; the Jivitadana Sangha Hospital for Monks and Nuns; the Tiger Parahita School for the Development of National Races (i.e. orphaned boys from throughout the country); and the Myanmar Medical Association. On 14 November 1993, the Special Rapporteur also met with representatives of the following political parties which are participating in the National Convention drafting the new constitution of the Union of Myanmar: the National League for Democracy (NLD); the Union Kayene League; and the National Unity Party (NUP).

18. While the information and views obtained in the course of his visits and meetings will be reflected below under relevant subject headings, the Special Rapporteur draws attention here to the salient aspects of his meetings with the five governmental representatives mentioned above.

2. The meeting with Secretary One

19. On the morning of 10 November 1993, the Special Rapporteur enjoyed a frank, open and lengthy exchange of views with General Khin Nyunt which touched upon most issues of concern for respect of human rights in Myanmar. On the matter of the general political organization of the State, General Khin Nyunt denied that Myanmar is run simply by a "military government". He explained that the SLORC, which he characterized as "essentially a military government but not so rigid", is managing a process of national reconciliation where a variety of insurgent groups are now being brought back into the legal framework of discussions and during which a National Convention is engaged in the process that would lead to the drafting of a new, strong constitution for the country. To counter anarchy and maintain security for the people, General Khin Nyunt stated that some harsh acts had been necessary in the first year of the SLORC, but that such acts had been few since then. In managing the process of national reconciliation and restoring law and order, General Khin Nyunt described a variety of social and economic development initiatives which had been taken by the Government in order to improve the lives of the people and help "build nationalism", i.e. the general sentiment of loving the country and building and protecting the nation. In this process, General Khin Nyunt personally paid visits to hundreds of townships and thousands of village tracks in order to hear the voices of the grass-roots of the population. Once the new constitution has been drafted and adopted, General Khin Nyunt assured the Special Rapporteur that a civilian government shall take power. With regard to the time-frame for the transfer of power to a civilian government, General Khin Nyunt stated that it was not yet the time to specify when a new constitution would be drafted and a new civilian government would be formed under such a constitution. However, he strongly stressed that (a) there will be a strong Constitution and (b) there will be a civilian government. He explained that, before achieving those goals, two basic conditions will have to be met: (a) political and social stability must be maintained, and (b) the "Union" as a multi-ethnic State must be secured so as to avoid a disastrous dissolution

of the State. Thus, General Khin Nyunt continued, all insurgent groups had to be brought back into "the legal fold" before the objectives could be achieved. Concerning the Special Rapporteur's specific request to visit Daw Aung San Suu Kyi, General Khin Nyunt stated that it was "still too early", but that it might be "perhaps possible in the future" as he suggested the possibility of inviting the Special Rapporteur back to Yangon for this purpose "on short notice". When asked if the Government intends to release her on 20 July 1994, General Khin Nyunt answered that it was still too early to say.

3. The meeting with the Minister for Foreign Affairs

20. On the afternoon of 10 November 1993, the Special Rapporteur met with U Ohn Gyaw, Minister for Foreign Affairs, whereby the Special Rapporteur sought clarification on the status of the process of repatriation of the persons who had fled from Rakhine State to Bangladesh a year before and also the national process of democratization relating to the 1990 elections and the ongoing National Convention. The Minister explained that an agreement had been reached with the United Nations High Commissioner for Refugees (UNHCR) in an effort to ensure the "voluntary and safe return" of the persons who had left; it was the responsibility of the country of refuge to assure the voluntary nature of repatriation, while it was the responsibility of Myanmar to assure the safety of the refugees upon return. Both Myanmar and Bangladesh were pleased with this accord and the participation of UNHCR, but there remains the question of reconciling a significant discrepancy in the numbers of affected persons: the Government of Myanmar had cleared some 95,000 persons for return (later clarified as 123,934 upon the Special Rapporteur's meeting with relevant authorities in Rakhine State), while the Government of Bangladesh claimed that there were still 230,000 residents of Myanmar to return from Bangladesh. On the matter of the process of democratization, Minister U Ohn Gyaw explained that the "winners" of the 27 May 1990 elections had been announced in the newspapers, but that, in the absence of a constitution, there were no positions for those elected persons to take up. Consequently, there had been no "final announcement" or formal election notice (in the sense of publication in the Official Gazette). The Minister stressed that the National Convention, composed of personalities representing eight strata of society including many "winners" of the 1990 elections, was preparing constitutional principles and guidelines which would eventually be placed before a constituent assembly composed of the elected persons from the 1990 elections.

4. The meetings with the Attorney-General and the Chief Justice

21. On the morning of 11 November 1993, the Special Rapporteur met with Attorney-General U Tha Tun after having earlier met with Chief Justice Aung Toe. His discussion with the Chief Justice had addressed the recent trials of political leaders, the National Convention (which the Chief Justice is chairing), and some issues of legislative reform (for which the Chief Justice is not responsible but of which he has some knowledge as a member of the Law Revision Commission formed by the Government). As such, the discussion with Attorney-General U Tha Tun revolved around new legislation, such as the Child Protection Law, which fully incorporates the United Nations Convention on the Rights of the Child, and reform of existing Myanmar legislation for which the Attorney-General has some responsibility both in his

Governmental Office and as Chairman of the Law Revision Commission. It is to be noted here that, in response to the Special Rapporteur's inquiries and requests, the following complete lists were subsequently supplied to the Special Rapporteur: (a) the 99 Laws enacted by the SLORC between 18 August 1988 and 12 November 1993; (b) the 186 Laws repealed by the SLORC; and (c) the 93 Laws under review. It is also to be noted that the Law Revision Commission, over which the Attorney-General presides, is officially known in SLORC Notification No. 33/91 of 17 July 1991 as the "Laws Scrutiny Central Body".

5. The meeting with the Minister of Information

22. On the afternoon of 15 November 1993, the Special Rapporteur met with Brigadier General Myo Thant, Minister of Information, together with members of the Information Committee over which the Minister presides. The subject of discussion focused on the democratization process and, in particular, the National Convention. At the beginning, the Minister recounted the process from its very start, explaining how the Preparatory Committee for the National Convention was constituted, specifying the composition of delegations to the National Convention, and highlighting the achievements of each meeting of the National Convention since it began on 7 January 1993 through to its recent adjournment (the National Convention was to reconvene in plenary on 18 January 1994). On the subject of legal processes against political leaders, the case of Dr. Aung Khin Sint was briefly discussed in so far as the offence involved related to circulation of a note in the context of the National Convention. On the subject of the Government of Myanmar's laws relating to the 135 national races of the country, the Minister of Information explained that this figure and the specific classifications arose simply from the results of the 1983 census where individuals had identified themselves as belonging to one of 135 different groups; 35 such groups were said to have less than 10,000 members, while only 5 groups had more than 1 million members. The Minister provided further basic information on the following subjects: (a) the nature of the newly constituted Union Solidarity and Development Association; (b) the present composition of the Government; (c) the present costs and availability of basic commodities; and (d) the remaining number of political prisoners. It should be noted that, in relation to the deliberations on a future constitution, the Minister accepted the Special Rapporteur's suggestion that a copy of the Universal Declaration of Human Rights, in the Burmese language, be provided to every National Convention Delegate. By letter dated 7 January 1994, the Special Rapporteur transmitted an authentic copy of the Universal Declaration of Human Rights in the English language, together with an unofficial translation in the Burmese language, to the Minister of Information in the hope that copies of the Declaration would be circulated to all National Convention Delegates upon the reconvening of the Convention on 18 January 1994.

23. In addition to meetings with high-level government officials, the Special Rapporteur visited a number of places relevant to his mandate. The impressions and views of the Special Rapporteur on those visits are briefly described below.

6. The visit to Insein prison

24. On the afternoon of 12 November 1993, the Special Rapporteur visited Insein prison. The prison warden informed the Special Rapporteur that there were 4,061 prison inmates of whom 942 were women (the prison had a capacity of 5,000). No prisoners were awaiting death because all death sentences had been commuted by an order of November 1992. The Special Rapporteur was first guided to a small building where four women inmates were kept in separate cells of approximately 100 square feet having one 4-square-foot window high on one side of a wall. In another building, about 150 women inmates were grouped together in a large hall dressed in white cotton and sat cross-legged in silent rows with their heads bowed. There were female guards, well trained and disciplined, watching the women's section of the prison. Later, the Special Rapporteur passed through another row of cells where male inmates were kept in separate rooms about the same size as the womens' cells. The physical health conditions of the inmates appeared to be normal. The Special Rapporteur also viewed the hospital building which could accommodate up to 50 patients. The doctor serving there informed the Special Rapporteur that, while less serious illnesses could be treated there, the most serious cases would be sent to Yangon Hospital; such cases would number about 50 to 100 a year.

25. Towards the end of his visit to Insein prison, the Special Rapporteur was allowed to meet with two political leaders detained there: U Tin U, who had a distinguished military career and had been in command of the military and was subsequently Minister of Defence; and Dr. Aung Khin Sint, an NLD member elected in the 1990 elections and a delegate to the National Convention. The meetings took place in front of the prison warden and other staff of the prison accompanied by a group of photographers.

26. U Tin U greeted the Special Rapporteur in front of a small building where he was being kept. The building was a separate one-storey house with an entrance, sleeping section and a toilet and kitchen facilities behind. At the outset of the meeting, U Tin U proclaimed that he was a "political prisoner" despite the claim of the authorities that he was an "ordinary criminal". He stated that he had suffered five months of effective house arrest before being brought before a military court on numerous charges. He said that he had been charged, in particular, with: (a) inciting the entire population for democracy and human rights; (b) corresponding with parliamentarians of the European Communities, Japan and the United States of America; and (c) meeting with military personnel and others in groups. Government witnesses presented testimony at his trial, but he was denied the right to cross-examine them. After hearing the witnesses, the Court proceeded to sentence him to three years' imprisonment; he assumes that it was preconceived. He had already served three years in prison and had, in fact, already served another year. Instead of being released, he is now serving an additional seven years to which he was sentenced by a second military court for the exact same charges. He pleaded res judicata, but the judge did not seem to understand what he was saying, and found him guilty again and sentenced him to a second (more severe) term of imprisonment to be served consecutively to the first. U Tin U declared; "I love the army, but I love the people more than the army". He stated that, after the 1990 elections, many people had been detained for a long time without trials as "ordinary criminals". He sought their release and

remedies. So, he came to this fate. U Tin U indicated that his treatment was good (he appeared to be physically and mentally healthy). The doctor takes good care of him although a shortage of medicines is a problem. His wife comes to see him every two weeks. He has access to all the religious books and the New Light of Myanmar, but he receives no other information and no other entertainment.

27. Following the meeting with U Tin U, the Special Rapporteur was taken to another building, adjacent to the house where U Tin U was kept, with a few cells, one of which held Dr. Aung Khin Sint. When the Special Rapporteur walked into the cell, together with the prison warden and his staff and accompanying photographers, Dr. Aung Khin Sint stood in the centre of the room which was approximately 16 square metres with a small window on the opposite side of the entrance. Dr. Aung Khin Sint addressed the Special Rapporteur in the Burmese language, as he clearly indicated he had been advised to do. He said that he had done his medical training in England and obviously spoke English well. At the outset, he paraphrased what he called an English proverb: "When one flies over a cuckoo's nest, one meets with problems and difficulties". Dr. Aung Khin Sint stated that the Special Rapporteur should know that those he meets would face problems and would be likely to be sentenced to 10 years' imprisonment. He said that he had once flown over a cuckoo's nest and he did not want to do the same thing again. Therefore, he must be careful how to answer the questions raised by the Special Rapporteur. If he answered "wrong", his 20-year prison sentence would become 40 years. He further stated that, as for the reasons of his imprisonment, they were clearly stated as according to existing laws: such information could be obtained from the Government. He said he had been tried in a special court, i.e. not an ordinary court. It was his own choice that he did not hire a lawyer because he wanted to defend himself. He had received his sentence recently and was intending to appeal through the proper channels. Dr. Aung Khin Sint informed the Special Rapporteur that he was treated well in the prison and had even received a new tooth in his first week there. In concluding, he repeated that he did not want to be in prison for 40 years, and so he preferred to say no more.

28. Following the meetings with the political leaders in prison, the Special Rapporteur returned to the reception room where he requested and was shown the prison records. Specifically, three registry books were brought: one, as a general example, from several years back, and then the two books wherein U Tin U and Dr. Aung Khin Sint were registered. The books were found and brought with relative ease, and all were in order, i.e. all necessary entries had been made including bases of imprisonment, dates, etc. The entry of U Tin U stated, inter alia, that he had been admitted on 22 December 1989 at 16.20 p.m. and that he had been sentenced for breaching the 1950 Emergency Law, sections 5 (a), (b), (c) and (g), and also Law 114. It was also recorded that he had been sentenced to three years plus seven years' imprisonment and that he had appealed. Dr. Aung Khin Sint's entry stated, inter alia, that he entered the prison on 27 October 1993 and had been sentenced on 15 October 1993 to a total of 20 years as follows: (a) 7 years for violation of section 5 (j) of the 1950 Emergency Law; (b) 11 years (7 years plus 4 years) for 2 offences of sections 6/17 and 20 of the Publications and Printing Law; and (c) 2 years for violation of section 5 (1) (4) of the Official Secrets Act.

7. Visits to hospitals

29. On the morning of 12 November 1993, the Special Rapporteur visited the First Hospital in the Hlaing Thaya New Township and the Yangon General Hospital in Yangon. On the afternoon of the same day, he visited the First Military Hospital in Yangon. On the morning of 15 November 1993, the Special Rapporteur visited the Jivitadana Sangha Hospital for Monks and Nuns in Yangon. The buildings and facilities of the hospitals looked clean and adequate. The doctors and nurses were competent, well trained, courteous and dedicated to their work. The Special Rapporteur was told at Yangon General Hospital, the largest and most sophisticated of the four, that they needed more advanced equipment for diagnosis and surgery. The Special Rapporteur requested to see the storerooms of medical supplies at each hospital. They all seemed to have a full complement of medical supplies which were said to be replenished regularly. The Special Rapporteur observed, however, that some medical supplies at the First Hospital in Hlaing Thaya New Township, the smallest and least sophisticated of the four, had just been freshly delivered in boxes. While the Special Rapporteur was not able to find any concrete evidence to prove the allegation that people suffer from a shortage of medicine because medical supplies were given to the military first and some were sold on the black market at high prices not easily affordable to ordinary citizens, he learned from interviews with ordinary people on the street that they cannot get enough medicine even at a large hospital.

30. At the First Military Hospital, which mainly serves the military personnel and their families (although it was explained that about 20 per cent of the patients were non-military people), the Special Rapporteur was told that it was just about to start a training programme with the help of the International Committee of the Red Cross (ICRC) on the subject of war medicine and treatment. They use the "Rules for Behaviour in Combat" booklet in their education. Through this training, doctors will pay more attention to cases of untoward injuries, such as injuries suffered in fighting and possibly alleged injuries suffered from torture and the like. The military doctors do visit in the prisons, too. There were said to be occasional fights between prisoners and sometimes with guards, and the doctors try to note the cases. But the Special Rapporteur was told that it was not easy to discern how injuries were actually sustained. Aside from the ICRC training programme conducted in Myanmar, the Government has sent the military's Chief Instructor and the head of its Judge-Advocate-General's office to the courses given by the International Institute of Humanitarian Law at San Remo, Italy, on humanitarian law to be followed by two more weeks of training at the ICRC headquarters in Geneva. In terms of their own training programmes, it was explained that humanitarian law was taught in the Defence Services Academy and two other military colleges.

8. Visits to the Myanmar Red Cross Society and the Myanmar Medical Association

31. On the afternoon of 11 November 1993, the Special Rapporteur visited the Myanmar Red Cross Society at their offices and met with its representatives led by Dr. Tin U. The subject of discussion went directly to the problem of AIDS. In response to the inquiry of the Special Rapporteur, it was explained that there are fewer than 1,000 cases of AIDS in Myanmar and between 4,000

and 5,000 cases of HIV+. However, the numbers are on the increase and the Society is responding to the problem through a large programme of public health education. With respect to the specific problem of the Myanmarese girls who had returned from Thailand diagnosed HIV+, Dr. Tin U himself had gone to the Thai border to inspect the situation. He said that the girls who had returned from Thailand were living together and were being "rehabilitated" through learning cooking and sewing and other skills in the facility operated under the Department of Social Welfare. Of the total of 139 such girls, 43 had tested HIV+. The reason for the high ratio of HIV+ among the returnees was explained that they were sent back to Myanmar because they were suspected of having been infected. On the subject of the Geneva Conventions, the Myanmar Red Cross Society was cooperating with the ICRC in a dissemination project. Such cooperation was expected to continue. In the next days, the ICRC Military Coordinator was to be lecturing to officers of the army.

32. On the morning of 16 November 1993, the Special Rapporteur met with the representatives of the Myanmar Medical Association. The Special Rapporteur was informed that a Food and Drugs Control Act had recently been passed and under this law several projects were under way to address the problem of shortage of medical supplies. Consequently, there was said to be "no shortage of essential drugs".

9. Visits to university campuses

33. On the morning of 10 November 1993, the Special Rapporteur visited Dagon University which had been recently opened in the Dagon New Township. There were a few newly constructed buildings for offices, classrooms, auditoria and general stores. There were evident plans to construct more buildings with the intention of making a large university accommodating more than 10,000 students in the future. The day of the Special Rapporteur's visit coincided with registration day at the university and there was a crowd of young students in the registration office waiting for the admission registration process to be completed. The Special Rapporteur asked about 10 young men and women to gather with him in an empty room to have a private conversation. All of them, looking bright and honest, said that they were interested in mathematics or natural sciences and were disinterested in politics. In his discussions with the Rector and other staff of the university, the Special Rapporteur learned that the content and textbooks of the lectures in all subjects taught at universities in Myanmar are centrally controlled and that it was not possible for individual professors or instructors to develop their own courses using materials or textbooks of their own choice. The Special Rapporteur stated that such practices were contrary to what he knew of "academic freedom" and would severely handicap the university's capacity to encourage learning and research through free thinking, free discussion and free expression of ideas.

34. On the afternoon of 15 November 1993, the Special Rapporteur briefly visited the campus of Yangon University. The university gates were officially closed because the university was in recess, so the Special Rapporteur was told, and there were practically no students or staff visible on the large campus composed of many mostly very old buildings for classrooms, offices, faculty residences and student dormitories surrounded by green trees. Some pedestrians were visible casually walking through the campus. Apart from the lack of visible student life, the campus appeared normal.

10. Visit to Rakhine State

35. On 13 and 14 November 1993, the Special Rapporteur visited Rakhine State under the kind and efficient arrangements of the Government of Myanmar and the military. He observed the operations at two reception camps near the border with Bangladesh. His visit coincided with the return of some 500 persons who had fled to Bangladesh. There were three Bangladesh officials who accompanied the returnees and assisted in the identification processes conducted by the Myanmarese officials. Officials from both countries were seen to be handling the matter quite professionally and efficiently. However, the returned refugees waiting for identification or for provision of food of other daily necessities appeared uncertain of their fate. The Special Rapporteur interviewed three male returnees privately, but through interpreters provided by the local authorities which was found necessary because the witnesses did not understand the Burmese language. They were chosen by the Special Rapporteur randomly from among 10 or so returnees preselected by the local authorities. They all said that the reason they had gone to Bangladesh was because of a shortage of food and an unavailability of employment. They stated that they had decided to come back because they had been told that the Myanmar and Bangladesh Governments had signed an agreement and that they had to come back. Two of the three returnees interviewed reported that they had returned to their former houses which required some repair; the third said that he had had to go to his father's house because his own house had been destroyed by a rain storm.

36. On the morning of 14 November 1993, the Special Rapporteur met with Major-General Win Myint, Commander of the Western Command of Rakhine SLORC. He told the Special Rapporteur that the problem of the Muslim population in Rakhine State was complex and that its history dated back to the British colonial era when the British had brought labourers from Bengal, which was then also under British rule, to the more fertile land of what is now known as Rakhine State. Many of these labourers stayed even after the area became part of what is today Myanmar. There are now approximately 600,000 Muslim residents in Rakhine State the total population of which is approximately 2,300,000. Myanmar people were said to have treated the Muslim population kindly and today the Government is trying to assist the development of the area by constructing schools, hospitals, roads and bridges. However, many of the Muslims were said not to love the country or to want to work. The difficulty of economic life was said to be the main reason for their move to Bangladesh. It was said that they had thought that they would get enough food, clothing and shelter in the UNHCR camps in Bangladesh without hard work. There was also said to be the problem of insurgent Muslim groups in Bangladesh who obstruct the process of repatriation.

11. The meetings with leaders of political parties

37. On the afternoon of 14 November 1993, the Special Rapporteur met with representatives of three political parties participating in the National Convention, i.e. the Union Kayene League, the National League for Democracy (NLD) and the National Unity Party (NUP). In spite of the strong request by the Special Rapporteur to meet with them in private at his office in the United Nations compound in Yangon, the meetings were arranged to take place at

a Government Guest House (36 Inya Road). The location and atmosphere were evidently not conducive to a free and unencumbered exchange of views.

38. The Special Rapporteur first met with the two representatives from the Union Kayene League: Chairman U Mahn Tay Aung Than and Vice-Chairman U Saw Than Aung. The representatives stated that the group had been formed in 1948 (reorganized in 1988) and that five delegates from the Union Kayene League freely attended the meetings held in the context of the National Convention. The League's membership was said to be approximately 5,000. The 27 Central Committee members all stood for election in the 1990 elections, but all failed to be elected. They stressed that they were natives and citizens of Myanmar, which they referred to as their "motherland". They stated: "We must do our best for our motherland". The motto of the Union Kayene League was said to be "Peace and Prosperity". They claimed to seek love and peace between all national races without hatred. In this vein, the representatives insisted that the country needs reconciliation "because some in the past have said unscrupulous things: we need law and order to make national solidarity". They said that they preferred the 1947 Constitution because it provided for more democracy. The representatives said that, when the National Convention is meeting, they could get together in groups and circulate their materials to their people. However, they added that "the world is not as wide as before; whatever we do, they know".

39. Then, the Special Rapporteur met with the two representatives of the NLD: Chairman U Aung Shwe and Vice-Chairman U Lwin. They explained that there were 92 delegates from the NLD participating in the National Convention. In the Convention, 15 points which would eventually form 15 chapters in the new constitution had been agreed upon by May 1993. On 6 May 1993, the Work Committee for the National Convention told the delegates that they would next discuss the draft chapter by chapter, beginning with the first chapter. However, on 6 June 1993, the delegates were told to state their views on all the chapters. The NLD was not prepared to do so; they were only prepared to make a detailed statement on the first chapter (entitled "Basic Principles"). Most other parties were prepared to make comments on all the chapters. The Shan NLD representatives spoke in detail on the first chapter, but said very little on the other chapters. On 16 November 1993, the Work Committee announced that the National Convention had concluded all the discussions on all the chapters and that the Convention would go into recess until 18 January 1994. This was contrary to what was understood by the NLD. The NLD considers that the Convention completed deliberation only on the first chapter and, therefore, they were not certain what would happen when the Convention was to reconvene in January 1994. The representatives informed the Special Rapporteur that the delegates to the National Convention could discuss matters in relative freedom in the Kyaikkasan Grounds (the camp where all the delegates stay during the meetings of the Convention), but, of course, there is always someone around when they meet and discuss matters. When the NLD delegates wish to meet and discuss matters at their office, they have to seek permission from the Government which is not easy to obtain in the case of the NLD (other parties seem to get such permission more easily). Also, the NLD was not permitted to publish any documents while other political parties seem to manage to publish their documents and newsletters.

40. The Special Rapporteur met with two representatives of the National Unity Party (NUP), which was formed out of the former Burma Socialist Programme Party (BSBP), and claimed a membership of about 1 million: U Khin Maung Cyi, an Executive Committee member, and U Han Shwe, the Secretary of the Political Department. They said that the party had eight delegates in the National Convention (five for the party and three from the elected representatives). The Special Rapporteur was informed that the NUP knew that they were expected to make statements on all 15 chapters of the new constitution and they did so in June 1993. The Special Rapporteur was further informed that the NUP was permitted to produce booklets and to distribute to its members.

C. The visit to camps in Thailand

41. Following his visit to Myanmar, the Special Rapporteur travelled to the frontier of Myanmar on the Thai side in order to meet with persons from Myanmar living in camps which skirt the Myanmar-Thai border. The visit to Thailand was conducted between 16 and 20 November 1993. The two camps visited were driving distance from the Thai city of Mae Sot. It is believed that there are approximately 60,000 persons who have fled Myanmar and are living in similar camps in the border area.

III. ALLEGATIONS

A. Arbitrary arrest and detention

42. The Special Rapporteur welcomes the fact that more than 2,000 persons detained under the emergency regulations have been released since April 1992. Allegations have nevertheless been received that under the prevailing SLORC orders and other emergency decrees many persons have been arrested for criticizing the SLORC and the army (Tatmadaw) or for openly criticizing the process of the National Convention. Reports indicate that up to 60 persons may have been detained since July 1993 for engaging in political activity although many of them have now been released.

43. By a letter dated 30 September 1993, the Special Rapporteur requested the Government of Myanmar to provide information regarding the following persons allegedly arrested: (a) U Aung Myint, Daw Khin Mar Aye and Htay Myint (alias Khin Soe) who were allegedly arrested in December 1992 for printing and distributing leaflets criticizing the National Convention; (b) Dr. Aung Khin Sint and U Than Min who were allegedly arrested in August 1993 for being "engaged in unscrupulous activities with intent to undermine the National Convention"; (c) Ma Thi Da, Nay Thin Myint, Bo Lay, Thet Oo, Tin Htune, Khin Maung, Kyaw Than, Kyi Myint and Than Min who were allegedly arrested in August 1993 in connection with the National Convention.

44. By a joint letter of 12 October 1993, the Special Rapporteur and the Chairman of the Working Group on Arbitrary Detention requested the Government of Myanmar to provide information concerning the legal situation of the following persons who were allegedly arrested on or about 3 September 1993 and detained at Insein prison on charges, in particular, of printing material without a permit, distributing illegally printed matter and committing acts against State security: Ma Thi Da, U Khin Maung, U Kyi Myint, U Kyaw Than,

U Lwin Oo, U Win Kyi, Ne Thin Myint, Bo Lay, Thet Oo, Ne Win, U Thin Thun, U Han Sien, Myu Win and Than Myin (some names overlapping with those listed in the foregoing paragraph).

45. In a note verbale dated 17 October 1993, the Government of Myanmar provided the Special Rapporteur with the following response to the above inquiries:

"1. Legal Action was taken against U Aung Myint, aged 57, Daw Khin Mar Aye, aged 53, and Htay Myint (alias) Khin Soe, aged 37, for distribution of seditious leaflets which could be detrimental to the security of the Union and maintenance of public law and order in accordance with section 5 (i) of the 1950 Emergency Provisions Act.

"2. Legal Action was taken against the following persons:

(a) Dr. Aung Khin Sint
(b) U Than Min
(c) Ma Thi Da
(d) Nay Tin Myint
(e) Bo Lay
(f) Thet Oo
(g) Tin Htun
(h) Khin Maung
(i) Kyaw Than
(j) Kyi Myint
(k) Than Myint

for infringing the existing laws. Each person has been charged and is being prosecuted in the Yangon Division Law Court presided over by two Divisional Judges.

"3. In the Union of Myanmar, arrest or detention of a person is made in accordance with the provisions contained in the Criminal Procedure Code enacted in 1898. The person concerned is formally charged and defended by a Legal Counsel, and a fair trial is conducted by a competent court. He has the right to appeal. The details concerning arrest or detention and trial of cases are appended herewith.

"4. The following are the detailed charges against the persons mentioned in the summary of allegations received:

	Name of defendant	Charges
(a)	Khin Maung (alias) Nyi Nyi	Unlawful Association Act 17 (1)
(b)	Than Min (alias) Tin Tun Aung	Charges against 11 persons - (a) to (k) - are Unlawful Act 17 (1) - distribution and dissemination during 1993 in Yangon Division of literature and leaflets issued by terrorist groups.
(c)	Thet Oo	

(d)	Ko Lay (alias) Aung Naing Oo	1950 Emergency Provisions Act 5 (j)
(e)	Nay Win (alias) Nay Tin Myint	Action which could be detrimental to the security of the Union, and maintenance of public law and order: distribution and dissemination of literature and leaflets.
(f)	Lwin Oo	
(g)	Kyaw Than	
(h)	Ma Thida	Section 17/20 of Registration of Printers and Publishers Law
(i)	Han Sein	
(j)	Kyi Myint	Infringement of this law for illegal action mentioned above.
(k)	Tin Tun (alias) Rashid	

(a)	Dr. Aung Khin Sint	1950 Emergency Provisions Act 5 (j)
(b)	U Than Min (alias) Tin Tun Aung	Both were found to have instigated the delegates attending the National Convention by surreptitious means to cause disruption and disorder among the delegates. Both of them distributed leaflets in May 1993 fraudulently under the name of 'monks and laity'.
		Section 17/20 of Registration of Printers and Publishers Law
		The infringement of this Law for illegal action mentioned above, including letters of threat to the delegates.

(a)	Dr. Aung Khin Sint	The Burma Official Secrets Act, section 5 (1) (4)
		He infringed the above Law by making use of an official document in committing the above-mentioned illegal acts."

46. With respect to Criminal Procedure Code of 1898 referred to by the Government of Myanmar in paragraph 3 of its letter quoted above, it has recently been brought to the attention of the Special Rapporteur that the licences of 10 lawyers were revoked by order of the High Court on 30 July 1993 as a consequence of convictions by military tribunals for various offences

including offences of the 1950 State Protection Act, section 5 (j). The background of this order and its implications for the administration of justice in Myanmar are not yet clear to the Special Rapporteur.

47. With respect to the charges and judicial procedures in the case of Dr. Aung Khin Sint, the Special Rapporteur has been provided with copies of the judgements delivered by the North Kayain District, Yangon Division, Court on 15 October 1993. The judgements were separately given for charges under: (a) the 1950 Emergency Provisions Act, 5 (j); (b) Section 17/20 of the Registration of Printers and Publishers Law; and (c) The Burma Official Secrets Act, section 5 (j) (4). However, each judgement refers to both Dr. Aung Khin Sint and U Than Min. Moreover, and as concerns the factual basis of the accusations leading to the judgements, the content of an allegedly threatening letter distributed by Dr. Aung Khin Sint was not provided in the judgement.

B. Torture and other cruel, inhuman or degrading treatment

48. Extensive allegations have been received that torture and other cruel, inhuman or degrading treatment have continued to be used by the Myanmar Army, police and intelligence services personnel. Such practices are said to have been used routinely in the interrogation of persons and in the treatment of porters, forced labourers and members of ethnic minorities.

49. The serious cases of torture and other cruel, inhuman or degrading treatment continue to occur in the context of military operations, forced portering and labour and forced relocation. They typically take the following forms: (a) forcing persons to carry heavy loads (in most cases, about 50 kg) of weapons, ammunition, food and other supplies for the army in mountainous areas and in harsh weather conditions; (b) beating, drowning and stabbing in cases of disobedience or attempts to escape; and (c) raping and other sexual assaults. The Special Rapporteur is particularly concerned about some recent reports alleging the taking of women and children for purposes of portering, where men are not available, and of subjecting them to the kinds of treatment described above.

50. In addition to the extensive reports received by the Special Rapporteur alleging widespread torture and other cruel, inhuman and degrading treatment in Myanmar, he has also interviewed persons claiming to be victims of such human rights violations. On some specific cases, the Special Rapporteur draws attention to the report of the Special Rapporteur on torture (E/CN.4/1994/31, paras. 399-403); in this connection, the Special Rapporteur is also aware that the Government of Myanmar has recently responded in detail to the allegations transmitted by the Special Rapporteur on torture.

C. Disappearances

51. The Special Rapporteur has received allegations stating that during the mass demonstrations of 1988 and December 1991, hundreds of persons, including students, monks, workers, writers, professors and others, were arrested or shot to death and that the whereabouts of many of these persons have never been established. It is believed that many remain in unacknowledged detention and that others have been buried in mass graves reported to be located in an

army base near the airport and in the Hlaing Thaya New Township. It has also been reported that many of the persons detained recently for their activities in connection with the National Convention have been held incommunicado for at least a period of time after the detention. Many cases of disappearance have been reported in the context of military operations and forced portering, labouring or relocation. One report received by the Special Rapporteur stated that "the victims were simply taken away by SLORC troops and 'disappeared'".

52. A specific response of the Government of Myanmar to the allegation of disappearances is found in the note verbale dated 17 October 1993 sent by the Government to the Special Rapporteur. As reproduced by the Special Rapporteur in his interim report to the General Assembly (A/48/578, para. 12), the Government stated, in particular, the following in paragraphs 5 to 7 of its reply:

> "5. Allegations stating that during the mass demonstrations of 1988 and December 1991, hundreds of persons including students, monks, workers, writers, professors and others were arrested or shot to death and that the whereabouts of many of these have never been established; that many remain in unacknowledged detention and that others have been buried in mass graves reported to be located in an army base near the airport and in the new Hlaingthaya Township are totally false and unfounded.
>
> "6. Under the existing laws, organizations empowered to arrest any person who has committed an offence maintain a register of persons arrested by them in accordance with the law, and reports have to be submitted to the relevant authorities concerning such arrests.
>
> "7. Under the existing laws of Myanmar, no one can be arrested and detained if it is not in accordance with the law. It is provided in section 61 of the Code of Criminal Procedure and no police officer shall detain in custody a person arrested, for a period exceeding 24 hours. Where it is necessary to detain such an accused for more than 24 hours, a special order of a Magistrate has to be obtained under section 167 of the Code of Criminal Procedure. If an arrest which is not in accordance with the law is made, the person making the arrest is liable to be punished under sections 341 to 348 of the Penal Code."

D. Extrajudicial, summary or arbitrary executions

53. The Special Rapporteur welcomes the decision of the Government of Myanmar, according to SLORC Order No. 12/92, to commute all death sentences passed by civil or military courts or tribunals between 18 September 1988 and 31 December 1992 to transportation for life (life imprisonment). However, the Special Rapporteur is particularly concerned about the reports from various reliable sources that there are still many cases of arbitrary killings of civilians by soldiers. For instance, the Special Rapporteur was informed that, as recently as September and October 1993, 18 villagers were murdered in Kyauk Kyi Township, Pegu Division, by members of Infantry Regiment Nos. 73 and 351. The victims were generally charged as "KNU (Karen National Union) sympathizers", but none of them were in fact involved in anti-government

activity. According to this report, those 18 victims were known cases and it is believed that many other villagers, who had been taken by the army and whose whereabouts remain unknown, were also murdered.

54. Other cases of reported extrajudicial, summary or arbitrary executions were described in paragraphs 20 to 23 of the interim report of the Special Rapporteur to the forty-eighth session of the General Assembly (A/48/578) of 16 November 1993. In response to the request of the Special Rapporteur to receive information describing any investigations into these allegations undertaken by the Government, the Government of Myanmar replied, by a note verbale dated 17 October 1993, as follows (and as previously reported by the Special Rapporteur in paragraph 12 of his interim report referred to above):

> "All allegations stated under this heading are totally false and unfounded. While undertaking our three main causes, which are non-disintegration of the union, unity and solidarity of the national races and perpetuity of sovereignty, the Tatmadaw has never, at any time committed such atrocities nor will it ever do so in future. There have been numerous cases running into thousands where the Tatmadaw, even in skirmishes with the insurgents, have treated captured persons very well and then handed them over to the police for prosecution for the offences committed. Atrocities such as demanding rice, livestock or money from villagers, rape of rural women, forced conscription and mass execution of villagers are being committed only by the insurgents time and again. It is believed that these allegations are based upon false information given by the insurgents, persons communicating with insurgents and persons who are endeavouring to bring down the government of the State Law and Order Restoration Council."

55. Although the Special Rapporteur is aware that sometimes reports of arbitrary killings tend to be exaggerated or distorted, that there are cases of good treatment of villagers and captured insurgents by the Tatmadaw soldiers and that the insurgents also commit serious violations of human rights now and then, the Special Rapporteur cannot deny, in view of so many reports confirmed by him as reliable, the fact that atrocities are being committed consistently and on a wide scale by the soldiers of the Myanmar Army against innocent villagers (particularly those belonging to ethnic minorities) in the form of extrajudicial execution, forced labour, rape, forced relocation and confiscation of property. In private conversations held with the Special Rapporteur, some high ranking officers of the army acknowledged the existence of such atrocities, but added that these were committed only rarely by some bad soldiers.

E. Treatment of the Muslim population in Rakhine State

56. In accordance with the agreement reached between Myanmar and Bangladesh on 28 April 1992, repatriation of the Myanmar residents having fled to Bangladesh began on 22 September 1992. In order to facilitate a systematic and orderly repatriation, five reception camps were established on the Myanmar side of the border on 15 May 1992. Of the five camps, only three are in fact being used. The Special Rapporteur visited two such camps in the course of his visit to Rakhine State on 13 and 14 November 1993. According to the

figures supplied by the Government, a total of 9,209 households and 41,098 persons (20,103 males and 20,995 females) have been repatriated since 22 September 1992 and 12 October 1993. However, a substantial number of Muslim population from Rakhine State still remain in the camps on the Bangladesh side of the border. Many of them are said to be fearful of possible ill-treatment by the Myanmar authorities upon return and, therefore, do not wish to come back without some kind of international monitoring.

57. In this connection, the Special Rapporteur welcomes the willingness of the Government of Myanmar to cooperate with UNHCR, through elaboration of a Memorandum of Understanding with UNHCR signed on 5 November 1993, in order to ensure the voluntary and safe return of the Muslim population who had fled to Bangladesh from Rakhine State. The Special Rapporteur was informed that preparations for UNHCR involvement in the repatriation process is making steady progress and some UNHCR staff would soon be sent to Myanmar. A fund-raising operation for this purpose is under way and there have already been several positive responses from potential donors.

F. Labour rights

58. The Special Rapporteur has been informed that workers in Myanmar do not enjoy basic labour rights including, in particular, freedom of association and the right to organize. There is hardly any trade union movement, and workers and trade unionists who criticize the Government would risk interrogation and arrest. The Special Rapporteur takes note of the fact that the matter has been raised before appropriate bodies of the International Labour Organisation (ILO). It is hoped that the work of the ILO would result in progress in the area of labour rights in Myanmar. It should also be pointed out that the new constitution to be drafted would have clear provisions for basic labour rights in accordance with international standards.

G. Rights of the child

59. The Special Rapporteur is pleased to note that, by a letter dated 15 October 1993 from U Ohn Gyaw, Minister for Foreign Affairs of Myanmar, to Dr. Boutros Boutros-Ghali, Secretary-General of the United Nations, the Government formally withdrew the reservations made by Myanmar upon accession to the Convention on the Rights of the Child in July 1991 with respect to article 15 (regarding freedom of association) and article 37 (regarding the prohibition of torture, cruel, inhuman or degrading treatment in regard, inter alia, to the treatment of children during interrogation). However, the Special Rapporteur is disturbed to learn from the testimony of witnesses that there exist many cases of children being forced to serve the army as porters. This practice, which is reported to remain widespread, would involve a variety of human rights violations, including forced labour, cruel and degrading treatment (if not also torture), and threats to life.

H. The National Convention

60. On 9 January 1993, the Government convened a National Convention to lay down the basic principles for the elaboration of a new and enduring constitution. Of the 702 delegates from 8 categories of people, 49 are

selected by the 10 political parties remaining after the 1990 elections, 106 are elected representatives and the remainder of the delegates from the other six categories were chosen by the SLORC. Before any real discussion could take place at the National Convention, a broad framework of basic objectives was given by the Government as follows: (a) non-disintegration of the Union; (b) non-disintegration of national solidarity; (c) consolidation and perpetuity of sovereignty; (d) emergence of a genuine multi-party democratic system; (e) development of eternal principles of justice, liberty and equality in the State; and (f) participation of Tatmadaw in a leadership role in the national politics of the future.

61. The Special Rapporteur has been informed that each of the eight groups represented were to have a panel of five chairmen who would lead the discussions and that, in the political parties group, only one chairman was from the NLD - the party that won a majority in the 1990 elections. In the elected representatives group, where 89 of the remaining 106 delegates were from the NLD, no NLD representatives were selected as chairmen.

62. In response to the query by the Special Rapporteur with regard to the allegation that, since the beginning of the National Convention, numerous participants have been disqualified or arrested for allegedly contravening the guidelines and, in particular, for having questioned the leadership role foreseen for the Tatmadaw, the Government replied, in paragraph 34 of its note verbale of 17 October 1993, and as reproduced by the Special Rapporteur in his interim report to the General Assembly (A/48/578, para. 12), as follows:

> "The sweeping allegations that numerous participants were disqualified or arrested for various reasons are totally false. Out of all the delegates attending the National Convention, action was taken against the following five delegates:
>
> "(a) The names of U Aung Htoo and Dr. Aung Khin Sint of the National League for Democracy were struck from the list of delegates representing the National League for Democracy. This action was carried out at the request of the National League for Democracy itself;
>
> "(b) Legal action was taken against U Maung, who represented one of the national racial groups, for infringement of existing laws;
>
> "(c) A representative from Pekhon constituency was disqualified as he became involved in and joined a terrorist group;
>
> "(d) The name of U Maung Ngwe of the Union Paoh National Organization was struck from the list of delegates as he passed away on 25 April 1993."

I. The movement toward reconciliation with insurgents

63. The Special Rapporteur has been informed that Secretary One, General Khin Nyunt, during his visit to Kayah State on 17 and 18 November 1993, spoke on the Government's efforts to restore peace and tranquillity and to promote social and economic development in the country.

In doing so he extended an official invitation to the armed groups to return to the legal fold, to hold talks with the Government and to join hands with the Government in the ongoing national endeavours for the development of border areas and national races. It has been reported that in response to this invitation the Karen National Union (KNU), the largest armed insurgent group, has decided to enter into talks with the Government of Myanmar. It is still too early to make any meaningful assessment of developments in this respect, but, from the viewpoint of protection of human rights, such a move towards true national reconciliation should be welcomed because, as stated above, many cases of serious human rights violations are being committed in the context of military operations.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

64. The visit of the Special Rapporteur to the Union of Myanmar at the invitation of the Government was facilitated by the efforts, cooperation and courtesy extended to him by the officials of the Government, in particular General Khin Nyunt, Secretary One of the SLORC, and U Ohn Gyaw, Minister for Foreign Affairs. Most of the requests of the Special Rapporteur to meet with persons pertinent to his mandate were met, including meetings with the Attorney-General, Chief Justice, Minister of Information, some political leaders in detention and representatives of political parties. However, the Special Rapporteur was disappointed that he was not allowed to meet with Daw Aung San Suu Kyi. He also regrets that the meetings with the representatives of political parties were held at a place and in an atmosphere not fully ensuring privacy. The Special Rapporteur, however, would wish to commend the Government for arranging quite efficiently his visits to Rakhine State, Insein prison and other places and facilities that he requested to visit.

65. The Special Rapporteur generally observed in Yangon and Sitway (the capital of Rakhine State) that there were visible signs of relaxation of tension in the life of the people. There were many consumer goods in market-places where many shoppers crowded. Streets and bridges have been constructed or improved. There were many cars on the streets. In fact, in the centre of Yangon, there were traffic congestions and parking problems at certain times of the day. However, the Special Rapporteur was informed that there were many poorer people in the cities and, in particular, in the countryside; these persons did not share in the prosperous life, and rather suffered from inflationary pressures on basic necessities such as rice and medicines.

66. The Special Rapporteur continues to be concerned about the serious restrictions imposed upon people in the enjoyment of civil and political rights. The people do not generally enjoy freedoms of thought, opinion, expression, publication and peaceful assembly and association. They seem to be always fearful that whatever they or their family members say or do, particularly in the area of politics, would risk arrest and interrogation by the police or military intelligence. Consequently, most people with whom the Special Rapporteur casually spoke avoided any conversation touching upon

political subjects. Several people told him that there were many persons wishing to tell the Special Rapporteur their stories, but were too afraid to come to see him.

67. The persons whose civil and political rights are most severely restricted are the leaders of political parties, particularly the NLD leaders, and delegates to the National Convention, again those from the NLD. Because of both visible and invisible pressures, they cannot assemble in a group, cannot freely discuss, and cannot publish or distribute printed materials. In this situation it is difficult to assume that, in the National Convention, open and free exchanges of views and opinions are taking place in order to produce a truly multi-party democratic constitution.

68. The Special Rapporteur is pleased to note that a little over 2,000 persons who had been imprisoned for political activities have been released since April 1992. He would, however, express concern that there are still hundreds of such persons detained, most notably Daw Aung San Suu Kyi. He also regrets that, since the summer of 1993, up to 60 persons have been arrested for engaging in political activities. While some of them have been released, still others are detained and some have been sentenced to long prison terms.

69. Government representatives have repeatedly explained to the Special Rapporteur that the Government is willing to transfer power to a civilian government, but that, in order to do so, they have to have a strong constitution and that, in order to have a strong constitution, they are doing their best to complete the work of the National Convention. However, the Special Rapporteur cannot help but feel that, given the composition of the delegates (only one out of seven delegates was elected in the 1990 elections), given the restrictions imposed upon the delegates (practically no freedoms to assemble, to print and distribute leaflets or to make statements freely), and given the general guidelines to be strictly followed (including the principle regarding the leading role of Tatmadaw), the National Convention does not appear to constitute the necessary "steps towards the restoration to democracy, fully respecting the will of the people as expressed in the democratic elections held in 1990" (General Assembly resolution 47/144, para. 4).

70. The Special Rapporteur welcomes the initiative of the Government of Myanmar to withdraw the two reservations relating to articles 15 and 37 of the Convention on the Rights of the Child.

71. The Special Rapporteur also welcomes the signing on 5 November 1993 of a Memorandum of Understanding between the Union of Myanmar and the United Nations High Commissioner for Refugees to facilitate and guarantee the voluntary and safe return of Myanmar residents from Bangladesh.

72. The Special Rapporteur further welcomes the undertaking of various training programmes for military officers and soldiers with the cooperation of the International Committee of the Red Cross and the Myanmar Red Cross Society in the area of international humanitarian law.

73. The Special Rapporteur is paying special attention to the recent successes of the Government initiative to invite the armed insurgent groups to enter into talks with the Government and he notes in particular some initially positive response from the Karen National Union. He is hopeful that the process will move forward in the direction of obtaining true reconciliation and peace throughout the country.

B. Recommendations

74. In the light of the foregoing conclusions, the Special Rapporteur submits the following recommendations for the consideration of the Government of Myanmar:

(a) The Government of Myanmar should fulfil in good faith the obligations it has assumed under Articles 55 and 56 of the Charter of the United Nations "to take joint and separate action in cooperation with the Organization for the achievement of ... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language and religion". In this respect, the Special Rapporteur would wish to note that the Government of Myanmar is in an ideal position because it could encourage the delegates to the National Convention to include various human rights provisions in the new constitution using, as a reference, the provisions of the Universal Declaration of Human Rights, copies of which the Minister of Information has agreed to circulate among the delegates;

(b) The Government of Myanmar should consider accession to the International Covenants on Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the two Protocols Additional to the Geneva Conventions of 1949;

(c) Myanmar law should be brought into line with accepted international standards regarding protection of physical integrity rights, including the right to life, protection against disappearance, prohibition of torture and cruel, inhuman or degrading treatment, providing humane conditions for all persons under detention and ensuring the minimum standards of judicial guarantees. Freedoms of thought, assembly and expression, including a free press and media, should be fully guaranteed;

(d) All political leaders, including elected political representatives, students, workers, peasants and others arrested or detained under martial law after the 1988 and 1990 demonstrations or as a result of the National Convention, should be tried by a properly constituted and independent civilian court in an open and internationally accessible judicial process. If found guilty in such judicial proceedings, they should be given a just sentence or, alternatively, they should be immediately released with the Government accepting responsibility to refrain from all acts of intimidation, threat or reprisal against them or their families. With respect to Daw Aung San Suu Kyi, the Government should release her immediately. In any event, she should not be kept under house arrest after 20 July 1994 when, according to the Government's own interpretation of Myanmar law, there will be no legal basis to continue to keep her under house arrest;

(e) The Government of Myanmar should take the necessary steps to bring the acts of soldiers, including privates and officers, in line with accepted international human rights and humanitarian standards so that they will not commit arbitrary killings, rapes and confiscations of property, or force persons into acts of labour, portering, relocation or otherwise treat persons without respect for their dignity as human beings. When the hiring of local villagers for porterage and other works may be required for governmental purposes, it should be obtained on a voluntary basis and adequate wages should be paid. The nature of work should be reasonable and in accordance with established international labour standards. When relocation of villages is considered necessary for military operations or for development projects, proper consultation with the villagers should take place and appropriate compensation should be paid for those relocations which may be determined necessary for reasons of the public good;

(f) Military and law enforcement personnel, including prison guards, should be thoroughly informed and trained as to their responsibilities for all persons in full accord with the standards as set out in international human rights instruments and humanitarian law. Such standards should be incorporated into Myanmar law and legislation, including the new constitution to be drafted. The training programme undertaken recently with the cooperation of the ICRC is a good start in this direction and should be continued;

(g) Given the magnitude of the abuses, official condemnation should be made by the Government of all acts by authorities involving human rights violations. Such acts, including all acts of intimidation, threat or reprisal, should not benefit from the present system of complete denial by, and impunity under, the Government;

(h) The Government of Myanmar should consider the revision of the 1982 Citizenship Law to abolish its burdensome requirements for citizenship. The law should not apply its categories of second-class citizenship in a manner which has discriminatory effects on racial or ethnic minorities, particularly Rakhine Muslims. It should be brought into line with the principles embodied in the Convention on the Reduction of Statelessness of 30 August 1961;

(i) The Government of Myanmar is encouraged to cooperate with UNHCR in facilitating and ensuring the voluntary and safe return of Rakhine Muslims from Bangladesh.